

**A RESOLUTION  
BY TRANSPORTATION COMMITTEE**

**A RESOLUTION AUTHORIZING THE PAYMENT OF KITTY HAWK'S PREFERENCE DEMAND PURSUANT TO § 547 (b) OF THE UNITED STATES BANKRUPTCY CODE; AUTHORIZING THE CHIEF FINANCIAL OFFICER TO DISBURSE AN AMOUNT NOT TO EXCEED \$1,500.00 FROM FDOA 5501 (AIRPORT REVENUE FUND) 200301 (NON DEPARTMENTAL UNALLOCATED CITYWIDE EXPENSES) 5750002 (PROPERTY LIQUIDATION); AND FOR OTHER PURPOSES.**

**WHEREAS**, Kitty Hawk Air Cargo, Inc. ("Kitty Hawk"), filed for bankruptcy on October 15, 2007, ("Petition Date"); and

**WHEREAS**, the City of Atlanta (City) received payments from Kitty Hawk totaling \$54,438.41 during the ninety (90) day period preceding the Petition Date; and

**WHEREAS**, the payments made by Kitty Hawk to the City in the amount of \$54,438.41 constitute a preference payment as defined by § 547(b) of the United States Bankruptcy Code; and

**WHEREAS**, Pursuant to § 547(b) of the United States Bankruptcy Code, a preference is any payment (i) made by Kitty Hawk to a creditor during the ninety (90) day period prior to the Petition Date (in this case the period between July 17, 2007 through October 14, 2007), when Kitty Hawk was insolvent, (ii) for a preexisting debt, and (iii) that allows the creditor (the City) to recover more than if it had been paid in the bankruptcy case; and

**WHEREAS**, the City's Department of Law negotiated the amount of the preference demand from \$54,438.41 to \$1,500.00; and

**WHEREAS**, pursuant to § 547(b) of the United States Bankruptcy Code, the City must pay Kitty Hawk the amount of \$1,500.00.

**NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA GEORGIA, AS FOLLOWS:**

**BE IT FURTHER RESOLVED**, that the City Attorney be and is hereby authorized to complete settlement of all claims which have been asserted or could have been asserted and from which negotiations have been completed with Kitty Hawk.

**BE IT FURTHER RESOLVED**, that the total settlement amount of Kitty Hawk's preference demand is \$1,500.00.

**BE IT FURTHER RESOLVED**, that the Chief Financial Officer is authorized and directed to pay Kitty Hawk the amount of \$1,500.00, as negotiated between the City and Kitty Hawk, from FDOA 5501 (Airport Revenue Fund) 200301 (Non Departmental Unallocated Citywide Expenses) 5750002 (Property Liquidation).

**BE IT FURTHER RESOLVED**, that the City Attorney is hereby directed to prepare the appropriate releases and other settlement documents as are necessary to protect the City's interest.

**BE IT FINALLY RESOLVED**, that nothing in this resolution shall operate, nor shall be construed, to estop or prejudice the City from contesting the validity of or disputing liability for any claims asserted or which could have been asserted in connection with this airline, or any of its successors firms or claims asserted by any other airline that has now or in the past had any claims against the City whether such claims are mature or are hereafter accruing.

**Part II: Legislative White Paper:** (This portion of the Legislative Request Form will be shared with City Council members and staff)

**A. To be completed by Legislative Counsel:**

**Committee of Purview:**

**Caption:**

**Council Meeting Date:**

**Requesting Dept.:**

**FAC Confirmed by:**

**B. To be completed by the department:**

**1. Please provide a summary of the purpose of this legislation (Justification Statement).** A resolution authorizing the payment of Kitty Hawk's preference demand pursuant §547(b) of the United States Bankruptcy Code.

**2. Please provide background information regarding this legislation.**

Kitty Hawk filed for bankruptcy on October 14, 2007 and paid the City of Atlanta \$54,438.41 ninety days prior to their filing which constitutes a preference payment under the US Bankruptcy Code. The City negotiated the \$54,438.41 down to \$1,500 in settlement of the claim. Payment of the claim is required under the US Bankruptcy Code §547(b).

**3. If Applicable/Known:**

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):**

(b) **Source Selection:**

(c) **Bids/Proposals Due:**

(d) **Invitations Issued:**

(e) **Number of Bids:**

(f) Proposals Received:

(g) Bidders/Proponents:

(h) Term of Contract:

4. Fund Account Center (*Ex. Name and number*):

Fund: 5501 (Airport Revenue Fund) Account: 200301 (Non departmental unallocated citywide expenses) Center: 5750002 (Property Liquidation)

5. Source of Funds: *Example: Local Assistance Grant*

6. Fiscal Impact:

*Example: This legislation will result in a reduction in the amount of \_\_\_\_\_ to Fund Account Center Number \_\_\_\_\_.*

7. Method of Cost Recovery:

8. *Examples:*

- a. Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.*
- b. Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.*

This Legislative Request Form Was Prepared By: Mariangela Corales

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

Dept.'s Legislative Liaison: Anita Williams

Contact Number: 404-530-6600

Originating Department: Aviation

Committee(s) of Purview: Transportation

Chief of Staff Deadline: 04/13/10

Anticipated Committee Meeting Date(s): 04/28/10

Anticipated Full Council Date: 05/03/10

Legislative Counsel's Signature: Mariangela Corales

Commissioner Signature: Maud J. [Signature]

**CAPTION**

A RESOLUTION AUTHORIZING THE PAYMENT OF KITTY HAWK'S PREFERENCE DEMAND PURSUANT TO § 547 (b) OF THE UNITED STATES BANKRUPTCY CODE; AUTHORIZING THE CHIEF FINANCIAL OFFICER TO DISBURSE AN AMOUNT NOT TO EXCEED \$1,500.00 FROM FDOA 5501 (AIRPORT REVENUE FUND) 200301 (NON DEPARTMENTAL UNALLOCATED CITYWIDE EXPENSES) 5750002 (PROPERTY LIQUIDATION); AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any) \$1,500.00

Mayor's Staff Only

Received by CPO: \_\_\_\_\_ (date) Received by LC from CPO: \_\_\_\_\_ (date)

Received by Mayor's Office: 4.9.10 [Signature] (date) Reviewed by: [Signature] (date)

Submitted to Council: \_\_\_\_\_ (date)